



STATE OF NEW YORK DEPARTMENT OF HEALTH

Corning Tower The Governor Nelson A. Rockefeller Empire State Plaza Albany, New York 12237

Richard F. Daines, M.D.
Commissioner

James W. Clyne, Jr.
Executive Deputy Commissioner

September 22, 2009

Bent Philipson
Member
Niskayuna Operating Company, LLC
20 Franklin Place
Woodmere, New York 11598

RE: 082134-E
Niskayuna Operating Company, LLC d/b/a Pathway
Rehabilitation and Special Care Center
(Schenectady County)
Niskayuna Operating Co., LLC requests approval to
become the new operator of Northwoods
Rehabilitation and Extended Care Facility at Hilltop

Dear Mr. Philipson:

I am pleased to inform you that, based on action taken at its meeting on September 11, 2009, the Public Health Council proposes to approve the above application providing the contingencies set forth in the enclosed resolution are first satisfied. Pursuant to 10 NYCRR section 600.4, documentation to satisfy the contingencies imposed by the Council shall be submitted to the Division of Health Facility Planning within the prescribed timeframes noted in the enclosed resolution.

Bureau of Project Management
Division of Health Facility Planning
Office of Health Systems Management
NYS Department of Health
433 River Street, 6th Floor
Troy, New York 12180-2299

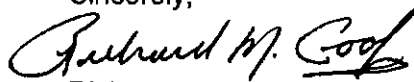
Before beginning any aspect of this project, you must submit written materials to satisfy the enclosed contingencies and receive written approval from the Public Health Council indicating the satisfaction of all contingencies.

This letter should not be construed as approval to file, with the Secretary of State, a certificate of incorporation, a certificate of amendment to a certificate of incorporation, a restated certificate of incorporation, an application for authority, articles of organization or any amendments thereto, or any other legal documents. A separate Public Health Council approval letter will be issued, as necessary, for the filing of documents with the Secretary of State after all contingencies are satisfied.

Also, this letter should not be construed as approval of property or lease costs submitted in support of this application, nor is this letter an assurance or recommendation that property costs or lease amounts as specified in the application will be reimbursable.

If you have any questions concerning this letter, please contact the Bureau of Project Management at 518-402-0911.

Sincerely,

A handwritten signature in black ink, appearing to read "Richard M. Cook". The signature is fluid and cursive, with a large initial "R" and a stylized "C".

Richard M. Cook
Deputy Commissioner
Office of Health Systems Management

Enclosure

-
cc: Ms. Bunn with attachments

RESOLUTION

RESOLVED, that the Public Health Council, pursuant to the provisions of Section 2801-a of the Public Health Law, on this 11th day of September, 2009, having considered any advice offered by the Regional Health Systems Agency, the State Hospital Review and Planning Council, the staff of the New York State Department of Health, and the Establishment Committee of this Council and after due deliberation, hereby proposes to approve the following application to establish Niskayuna Operating Company, LLC as the new operator of Northwoods Rehabilitation and Extended Care Facility at Hilltop, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

RESOLVED, that upon fulfillment by the applicant of the conditions and contingencies specified for the application in a manner satisfactory to the Public Health Council and the New York State Department of Health, the Secretary of the Council is hereby authorized to issue the approval of the Council of the application, and be it further

RESOLVED, that any approval of this application is not to be construed as in any manner releasing or relieving any transferor (of any interest in the facility that is the subject of the application) of responsibility and liability for any Medicaid (Medicaid Assistance Program -- Title XIX of the Social Security Act) or other State fund overpayments made to the facility covering the period during which any such transferor was an operator of the facility, regardless of whether the applicant or any other entity or individual is also responsible and liable for such overpayments, and the State of New York shall continue to hold any such transferor responsible and liable for any such overpayments, and be it further

RESOLVED, that upon the failure, neglect or refusal of the applicant to submit documentation or information in order to satisfy a contingency specified with reference to the application, within the stated time frame, the application will be deemed abandoned or withdrawn by the applicant without the need for further action by the Council, and be it further

RESOLVED, that upon submission of documentation or information to satisfy a contingency specified with reference to the application, within the stated time frame, which documentation or information is not deemed sufficient by Department of Health staff, to satisfy the contingency, the application shall be returned to the Council for whatever action the Council deems appropriate.

NUMBER:

082134

FACILITY/APPLICANT:

Niskayuna Operating Company, LLC d/b/a
Pathway Rehabilitation and Special Care
Center

APPROVAL CONTINGENT UPON:

1. The submission of a commitment signed by the applicant which indicates that, within two years from the date of the council approval, the percentage of all admissions who are Medicaid and Medicare/Medicaid eligible at the time of admission will be at least 75 percent of the planning area average of all Medicaid and Medicare/Medicaid admissions, subject to possible adjustment based on factors such as the number of Medicaid patients in the area awaiting placement, the facility's total Medicaid patient days, the facility's case mix, the length of time before private paying patients became Medicaid eligible, and the financial impact on the facility due to an increase in Medicaid admissions. [RNR]
2. Submission of a loan commitment for working capital acceptable to the Department of Health. [BFA]
3. Submission of an affidavit from each member in relation to the realty entities, acceptable to the Department of Health, which states that he or she is willing to contribute resources disproportionate to ownership percentages. [BFA]
4. Submission of an original affidavit from the applicant members (or stockholders or partners) making a commitment to personally fund the balloon payment on the proposed mortgage, should terms acceptable to the Department of Health be unavailable at the time of refinancing. [BFA]
5. Submission of a photocopy of the signed and dated Restated Articles of Organization of Niskayuna Operating Co., LLC, which is acceptable to the Department. [CSL]
6. Submission of a photocopy of the signed and dated Operating Agreement of Niskayuna Operating Co., LLC, which is acceptable to the Department. [CSL]
7. Submission of evidence of the transfer of the business and operations of the facility to the applicant, which is acceptable to the Department. [CSL]
8. Submission of evidence of site control, which is acceptable to the Department. [CSL]
9. Submission of an affidavit from Bent Philipson, acceptable to the Department of Health, that he will acquire a personal loan against his personal net equity for working capital requirements. [BFA]
10. Submission of a personal loan commitment for working capital, acceptable to the Department of Health. [BFA]

APPROVAL CONDITIONAL UPON:

N/A

Documentation submitted to satisfy the above-referenced contingencies
(4 copies) should be submitted within sixty (60) days to:

Mr. Jeffrey R. Rothman, M.S., M.B.A.
Director
Bureau of Project Management
NYS Department of Health
Hedley Building - 6th Floor
433 River Street
Troy, New York 12180-2299